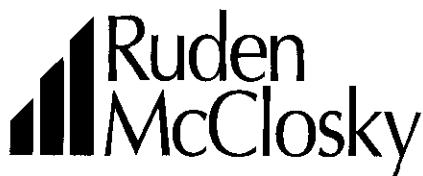


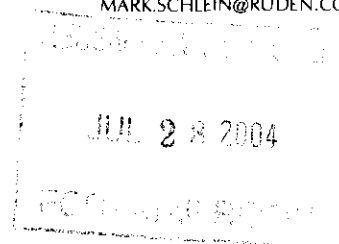
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July 13, 2004

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12 Street, SW
Washington, D.C. 20554

RE: **PETITION FOR A DECLARATORY RULING**

CG Docket # 02-278

Dear Ms. Dortch:

This Petition for a Declaratory Ruling by the Federal Communications Commission is being submitted by undersigned counsel on behalf of Express Consolidation, Inc. ("EXPRESS") The Declaratory Ruling is requested on two related preemption issues regarding a conflict between the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227 and a State of Florida statute.

EXPRESS is a tax-exempt nonprofit corporation with its offices in Florida. EXPRESS has been charged in a complaint [attached as exhibit A] by the Florida Department of Agriculture and Consumer Services with violating the Florida Telephone Solicitation statute, Section 501.059 which regulates both interstate and intrastate telemarketing practices [statute attached as exhibit B].

The TCPA [Sec.227 (a) 3(C)] states that calls made by a tax exempt nonprofit organization are not "telephone solicitations" and are exempt from the federal statute's prohibitions against making telephone calls using an automatic dialing system or an artificial or prerecorded voice. The Florida statute, Section 501.059, FS has no such exemption, and prohibits a tax exempt nonprofit organization from making **interstate** telephone calls using an automatic dialing system with a recorded message. The TCPA specifically authorizes a state to implement more restrictive regulations only with respect to **intrastate** calls. Petitioner believes that the state law is inconsistent with the federal statute by placing more onerous restrictions on the making of interstate telephone calls by a tax exempt nonprofit organization, and that the United States Congress, by passing the TCPA, has preempted any state law regulating interstate telephone calls that is in conflict with the federal statute.

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RUDEN, McCLOSKY, SMITH, SCHUSTER & RUSSELL, P.A.

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REQUEST FOR DECLARATORY RULING # 1.

Because Florida Statute, Section 501.059 places more onerous restrictions on the making of interstate telephone calls by a tax exempt nonprofit organization it is inconsistent with the Telephone Consumer Protection Act and is preempted by the federal law.

PETITIONER further states that the Florida Department of Agriculture and Consumer Services is using 501.059, Florida Statutes to improperly regulate interstate telephone calls. The telephone calls that are the basis of the state's enforcement action are made on behalf of EXPRESS by a California company. They originate in California and are placed to telephones in Florida, and are clearly interstate calls. The State of Florida alleges, however, that the regulatory action being taken against the company is not for **making** interstate calls, but rather enforces the state statute's prohibition against **causing or knowingly allowing** them [*interstate calls*] to be made. The state statute as applied effectively regulates the making of interstate telephone calls, and should not be allowed to do indirectly what it is prohibited from doing directly. The Florida statute is more restrictive than the TCPA because, as discussed above, it prohibits a tax-exempt nonprofit organization from making an interstate call using an automatic dialer with a recorded message.

REQUEST FOR DECLARATORY RULING # 2.

Florida Statute 501.059, as applied in this manner against a tax-exempt nonprofit organization on whose behalf interstate telephone calls are made, is in conflict with the Telephone Consumer Protection Act by effectively placing more onerous restrictions on the making of interstate telephone calls and is preempted by the federal law.

PETITIONER believes, for all the reasons discussed above, that Florida Statute 501.059 is inconsistent with the TCPA both in its language and in the manner it is being enforced, and, as a result, should be preempted by the TCPA.

Thank you for your consideration of the important matters contained in this Petition.

Sincerely,



11 *Mark H. Schlein*

Mark H. Schlein
Attorney for Petitioner

cc Erica McMahon
Consumer and Governmental Affairs Bureau

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,

Plaintiff,

vs.

Case No. 04-3242-CI-13

EXPRESS CONSOLIDATION, INC.,
a Florida non-profit corporation,

Defendant.

**COMPLAINT FOR PERMANENT INJUNCTION,
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

Plaintiff, State of Florida, Department of Agriculture and Consumer Services, sues the Defendant, Express Consolidation, Inc., a Florida non-profit corporation, and alleges as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action for permanent injunction, civil penalties and other statutory relief, brought pursuant to Section 501.059, Florida Statutes.
2. This Court has jurisdiction pursuant to the provision of said statute.
3. Plaintiff, State of Florida, Department of Agriculture and Consumer Services, is the enforcing authority pursuant to Section 501.059(8) Florida Statutes, and is authorized to seek the relief sought herein pursuant to the provisions of said statute and such other statutes authorizing such relief. Plaintiff has performed all conditions precedent to be performed by Plaintiff or such conditions have occurred.
4. The amount in controversy exceeds the minimum jurisdictional limit of this Court.

Exhibit "A"

5. Defendant is a Florida non-profit corporation with its principal place of business in Palm Beach County, Florida. Defendant is doing business within the State of Florida as defined in Section 501.059(1)(h), Florida Statutes. This cause of action accrued in Pinellas County, Florida by virtue of Defendant making unlawful telephone calls to citizens of Pinellas County, Florida.

6. At all times material hereto, Defendant has engaged in the business of selling consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes. Defendant in conducting its business is making unsolicited telephonic sales calls to citizens of the State of Florida.

7. Defendant's unsolicited telephonic sales calls are (a) not in response to an express request of the person called; (b) not primarily in connection with an existing debt or contract payment or performance of which has not been completed at the time of such call; (c) not made to any person with whom the telephone solicitor had a prior or existing business relationship; and (d) defendant is not a newspaper publisher or his or her agent or employee in connection with his or her business.

8. From on or before August 1, 2002 Defendant has been making unsolicited telephonic sales calls to citizens of the State of Florida whose names appear on the then-current quarterly no-sales solicitation calls listing published by the department. A list of the consumers called and the dates of such calls are described on Exhibit "A" attached hereto and by reference made a part hereof. Pursuant to Section 90.956, Florida Evidence Code, Plaintiff gives notice that Plaintiff intends to use Exhibit "A" as a summary in this action. Further, Defendant made or knowingly

allowed telephonic sales calls to be made with an automated system for the playing of a recorded message when a connection is completed to numbers called without having a live operator introduce the recorded message.

9. Section 501.059(4), Florida Statutes, makes it unlawful for a telephone solicitor to make or cause to be made any unsolicited telephonic sales calls to residents of the State of Florida if such resident's number appears on the then-current quarterly listing. Section 501.059(7), Florida Statutes, makes it unlawful to make or knowingly allow a telephonic sales calls to be made if such calls involve an automated system for the playing of a recorded message when a connection is completed to the numbers called without a live operator introducing the recorded message.

10. Unless the Defendant is enjoined from engaging further in the acts and practices herein complained, the continued activities of Defendant will result in damage to the consuming public.

COUNT I
(Injunctive Relief)

11. Plaintiff realleges paragraphs 1 through 10, above.

12. Section 501.059(8), Florida Statutes, provides that the department may seek injunctive relief to prohibit the improper telephonic solicitations in violation of said statute. This is an action for permanent injunction.

13. The Defendant's acts and practices as set forth herein constitute a violation of Section 510.059, Florida Statutes.

14. Unless Defendant is permanently enjoined from engaging further in such acts and practices as herein described, the activities of the Defendant will cause injury to the consuming public.

COUNT II
(Civil Penalties)

15. Plaintiff realleges paragraphs 1 through 10, above.

16. Defendant had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that its acts, as described above, were in violation of Section 501.059, Florida Statutes.

17. Defendant is therefore liable for civil penalties in the amount up to \$10,000.00 per violation under Section 501.059(8), Florida Statutes.

WHEREFORE, the Plaintiff, State of Florida, Department of Agriculture and Consumer Services, requests this Court grant the following relief:

A. Grant a permanent injunction against Defendant, through its officers, agents, employees or any other persons who act under, by through or on behalf of Defendant, prohibiting such persons from violating Chapter 501.059, Florida Statutes;

B. Grant such further relief as follows:

(i) Assess against Defendant civil penalties in the amount the Court deems appropriate in the amount up to \$10,000.00 for each act or practice found to be in violation of Chapter 501.059, Florida Statutes;

(ii) Waive any posting of bond in the action;

(iii) Award reasonable attorney fees and costs to Plaintiff herein should the Court find there is a complete absence of justiciable issue of either law or fact raised by the Defendant or if the Court finds bad faith on the part of the Defendant; and

(iv) Grant such other and further relief as this Court deems just and proper.

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

By: 

Louis E. Stolba, Senior Attorney
Florida Department of Agriculture and
Consumer Services
Room 520 - Mayo Building
407 South Calhoun Street
Tallahassee, Florida 32399-0800
Telephone No. (850) 245-1000
Facsimile No. (850) 245-1001
FBN 121249

Do Not Call (for Legal)
Parent Case Number: 0303-11352

Page 1 of 1

port Name: Do_Not_Call
 port Date: 03/25/2004 11:19 AM
 port Generated by: BETH EVANS

Business: **EXPRESS CONSOLIDATION, INC., 413 NE 3RD ST, DELRAY BEACH, FL 33483-4526**

E-Mail: **reshin@expressco.org**

# Purchase	Received	Order Period	No Sales List Purchase Request	Area Codes Ordered	Consumer Name / Address	Quarter	Date of Disposition	Business Rank
in of Call	RM	Identified Caller	Consumer Number	Case Number	Consumer Name / Address	Quarter	Date of Disposition	Business Rank
12/2002	806	800-688-8014	487-877-8412	8208-48746	DERMARTIN, MRS. BETTY THERESA, 884 WHITE OAK CT, WINTER SPNGS, FL 32708-3844			
13/2003	806	800-688-8014	487-887-7887	0301-03883	FISHER, MRS. CAROLYN N., 4378 LAKE UNDERHILL RD APT D, ORLANDO, FL 32803-7014		313 - 01/24/2003	02/03/2003
18/2004	801	888-518-8115	881-822-8882	0403-04004	GOODING, DOROTHY B., 1082 RAINTREE LN, WEST PALM BEACH, FL 33410-8201	YES	301 - 02/25/2004	03/05/2004
28/2004	805	888-518-8115	321-383-7888	0403-04805	JOHNER, JAMES, 122 BEVERLY ST, TITUSVILLE, FL 32780-8031	YES	313 - 03/11/2004	
22/2002	806	800-688-8014	388-688-8482	0208-48888	KOCH, ALVIN, 4357 SW 147TH CT, MIAMI, FL 33185-4382		313 - 08/03/2002	08/03/2002
28/2004	805	888-518-8115	727-726-3307	0403-84734	MCDERMOTT, GEORGE W., 2648 ESTANCIA BLVD, CLEARWATER, FL 33761-2838	YES		
18/2004	805	800-877-4792	727-888-3784	0403-08083	RAEME, FIRMAN, 10881 JOHNSON BLVD APT H418, SEMINOLE, FL 33773-7704	YES	313 - 03/23/2004	
14/2002	801	800-688-8014	381-888-2288	0308-48480	REICHENSTEIN, HARRY B., 886 N COUNTRY CLUB DR, ATLANTA, FL 33483-1038	YES		
30/2003	806	800-688-8014	884-878-8833	0303-08278	RITTLE, MARY ELLEN, 3723 CORAL TREE CIR, COCONUT CREEK, FL 33073-4420	YES		
	805	800-887-4792	880-878-8844	0402-02881	SCHIFFER, RICHARD, 1871 BELLEVUE WAY, TALLAHASSEE, FL 32304-4188		313 - 02/18/2004	03/08/2004
14/2004	806	888-418-8115	881-874-8128	0403-04080	SHUTTLEWORTH, LINDY, 4806 S OCEAN BLVD APT 707, HIGHLAND BEACH, FL 33487-4252	YES	313 - 02/25/2004	03/05/2004
17/2003	805	808-888-8030	383-333-8884	0308-31588	STEPHANIAN, LUCY, 3817 SW 98TH BLVD, GAINESVILLE, FL 32608-8818	YES	313 - 08/28/2003	08/18/2003
13/2002	805	800-688-8014	813-837-8807	0212-84225	TALCIET, JUDITH A, 3804 W WISCONSIN AVE, TAMPA, FL 33611-4834		313 - 12/12/2002	01/18/2003
	805	800-688-8014	727-888-8731	0212-81884	WASHER, LOUANNIE, 2119 17TH TER SW, LARGO, FL 33774-1705		313 - 12/04/2002	01/18/2003
16/2002	806	800-688-8014	487-282-4284	0211-80439	WETHERINGTON, RUSSELL, 10084 MARSH PINE CIR, ORLANDO, FL 32832-8818		313 - 11/21/2002	

West's Florida Statutes Annotated Currentness

Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations

Chapter 501. Consumer Protection (Refs & Annos)

Part I. General Provisions (Refs & Annos)

→**501.059. Telephone solicitation**

(1) As used in this section:

(a) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(b) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family, or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any services related to such property.

(c) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. In response to an express request of the person called;
2. Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;
3. To any person with whom the telephone solicitor has a prior or existing business relationship; or
4. By a newspaper publisher or his or her agent or employee in connection with his or her business.

(d) "Commission" means the Florida Public Service Commission.

(e) "Telephone solicitor" means any natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

(f) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(g) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(h) "Doing business in this state" refers to businesses who conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(i) "Department" means the Department of Agriculture and Consumer Services.

(2) Any telephone solicitor who makes an unsolicited telephonic sales call to a residential, mobile, or telephonic paging device telephone number shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation.

(3)(a) Any residential, mobile, or telephonic paging device telephone subscriber desiring to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls may notify the department and be placed on that listing upon receipt by the department of a \$10 initial listing charge. This listing shall be renewed by the department annually for each consumer upon receipt of a renewal notice and a \$5 assessment.

(b) The department shall update its "no sales solicitation calls" listing upon receipt of initial consumer subscriptions or renewals and provide this listing for a fee to telephone solicitors upon request.

(c) All fees imposed pursuant to this section shall be deposited in the General Inspection Trust Fund for the administration of this section.

(4) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears in the then-current quarterly listing published by the department. Any telephone solicitor or person who offers for sale any consumer information which includes residential, mobile, or telephonic paging device telephone numbers, except directory assistance and telephone directories sold by telephone companies and organizations exempt under s. 501(c)(3) or (6) of the Internal Revenue Code, [FN1] shall screen and exclude those numbers which appear on the division's then-current "no sales solicitation calls" list. This subsection does not apply to any person licensed pursuant to chapter 475 who calls an actual or prospective seller or lessor of real property when such call is made in response to a yard sign or other form of advertisement placed by the seller or lessor.

(5)(a) A contract made pursuant to a telephonic sales call is not valid and enforceable against a consumer unless made in compliance with this subsection.

(b) A contract made pursuant to a telephonic sales call:

1. Shall be reduced to writing and signed by the consumer.
2. Shall comply with all other applicable laws and rules.
3. Shall match the description of goods or services as principally used in the telephone solicitations.
4. Shall contain the name, address, and telephone number of the seller, the total price of the contract,

and a detailed description of the goods or services being sold.

5. Shall contain, in bold, conspicuous type, immediately preceding the signature, the following statement:

"You are not obligated to pay any money unless you sign this contract and return it to the seller."

6. May not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

(c) The provisions of this subsection do not apply to contractual sales regulated under other sections of the Florida Statutes, or to the sale of financial services, security sales, or sales transacted by companies or their wholly owned subsidiaries or agents, which companies are regulated by chapter 364, or to the sale of cable television services to the duly franchised cable television operator's existing subscribers within that cable television operator's franchise area, or to any sales where no prior payment is made to the merchant and an invoice accompanies the goods or services allowing the consumer 7 days to cancel or return without obligation for any payment.

(6)(a) A merchant who engages a telephone solicitor to make or cause to be made a telephonic sales call shall not make or submit any charge to the consumer's credit card account or make or cause to be made any electronic transfer of funds until after the merchant receives from the consumer a copy of the contract, signed by the purchaser, which complies with this section.

(b) A merchant who conducts a credit card account transaction pursuant to this section shall be subject to the provisions of s. 817.62.

(c) The provisions of this subsection do not apply to a transaction:

1. Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;

2. In which the consumer may obtain a full refund for the return of undamaged and unused goods or a cancellation of services notice to the seller within 7 days after receipt by the consumer, and the seller will process the refund within 30 days after receipt of the returned merchandise by the consumer;

3. In which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, or catalog of the merchant that contains:

a. The name, address, and telephone number of the merchant;

b. A description of the goods or services being sold; and

c. Any limitations or restrictions that apply to the offer; or

4. In which the merchant is a bona fide charitable organization or a newspaper as defined in chapter 50.

(7)(a) No person shall make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.

(b) Nothing herein prohibits the use of an automated telephone dialing system with live messages if the calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed or if the telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the department's then-current "no sales solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.

(8) The department shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed \$10,000 per violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(9)(a) In any civil litigation resulting from a transaction involving a violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney's fees and costs from the nonprevailing party.

(b) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(c) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney's fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(10) The commission shall by rule ensure that telecommunications companies inform their customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to customers; and

(b) Conspicuous publication of the notice in the consumer information pages of the local telephone directories.

CREDIT(S)

Amended by Laws 1997, c. 97-103, § 616, eff. July 1, 1997; Laws 2003, c. 2003-179, § 4, eff. July 1, 2003.

[FN1] 26 U.S.C.A. § 501(c)(3), (6).

HISTORICAL AND STATUTORY NOTES

Derivation:

Laws 1994, c. 94-298, § 3.

Laws 1992, c. 92-291, § 59.

Laws 1992, c. 92-186, § 1.

Laws 1991, c. 91-237, §§ 3, 5.

Laws 1990, c. 90-143, § 1.

Laws 1987, c. 87-253, § 1.

Amendment Notes:

Laws 1990, c. 90-143, § 1, eff. Oct. 1, 1990, rewrote the section, which formerly read:

"(1) As used in this section:

"(a) 'Consumer telephone call' means a call made by a telephone solicitor for the purpose of soliciting a sale of any consumer goods or services to the person called, or for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes.

"(b) 'Consumer goods or services' means any tangible personal property which is normally used for personal, family, or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and time-share estates, and any services related to such property.

"(c) 'Unsolicited consumer telephone call' means a consumer telephone call other than a call made:

"1. In response to an express request of the person called;

"2. Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;

"3. To any person with whom the telephone solicitor has an existing business relationship; or

"4. By a newspaper publisher or his agent or employee in connection with his business.

"(d) 'Commission' means the Florida Public Service Commission.

"(e) 'Telephone solicitor' means any natural person, firm, organization, partnership, association, or

corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

"(f) 'Division' means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

"(2) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

"(a) Identify himself or herself and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the person who is the object of the telephone solicitation; and

"(b) Within 30 seconds after beginning the conversation, inquire whether the person being solicited is interested in listening to a sales presentation and immediately discontinue the solicitation if the person being solicited gives a negative response.

"(3) Any residential telephone subscriber desiring a directory listing indicating that the subscriber does not wish to receive unsolicited consumer telephone calls may notify the serving local exchange company and order an extra line listing effective with the next telephone directory issue. Such extra line listing shall appear directly beneath the primary listing and shall read 'No Sales Solicitation Calls.' The charge for such extra line listings shall be the tariffed rates as approved by the commission for additional or extra line listings.

"(4) No telephone solicitor shall make or cause to be made any unsolicited consumer telephone call to any residential telephone number if the number for that telephone appears in the then-current directory published by the telephone company and such listing indicates that the subscriber does not wish to receive unsolicited consumer telephone calls.

"(5) No telephone solicitor shall attempt to contact by telephone any person whose residential telephone number is not included in the most recently published telephone directory as the result of a request for an unpublished telephone number, unless the person making such solicitation has had previous business experience with the person solicited.

"(6) The division shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the division finds that there has been a violation of this section, it may bring an action to impose a civil penalty and to seek such other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall not exceed \$10,000 per violation and shall be deposited in the General Revenue Fund, unallocated.

"(7) Telephone companies shall not be responsible for the enforcement of the provisions of this section and shall not be liable for any error or omission in the listings made pursuant hereto."

Laws 1991, c. 91-237, §§ 3, 5, eff. Sept. 1, 1991, added provisions pertaining to cable television related activities in subsec. (5)(c), and added the provisions now appearing as the third sentence to subsec. (4).

Laws 1992, c. 92-186, § 1, eff. July 1, 1992, inserted the second sentence in subsec. (4).

Laws 1992, c. 92-291, § 59, eff. July 1, 1992, in subsec. (1), deleted a definition of "Division" and redesignated subsequent definitions; in subsecs. (3) and (4), substituted "department" for "division"; in subsec. (3)(c), following "Fund" deleted "as created in s. 570.20"; in subsec. (7)(b), substituted "department's" for "division's"; in subsec. (8), substituted "department" for "division" throughout; in the second sentence, substituted reference to General Inspection Trust Fund and Consumer Frauds Trust Fund for a reference to General Revenue Fund; and, in subsec. (9)(e), substituted "department" for "division".

Laws 1994, c. 94-298, § 3, eff. July 1, 1994, in subsec. (5)(c) inserted "or to any sales where no prior payment is made to the merchant and an invoice accompanies the goods or services allowing the

consumer 7 days to cancel or return without obligation for any payment", and in subsec. (6)(a) inserted "or make or cause to be made any electronic transfer of funds" and ", signed by the purchaser".

Laws 1997, c. 97-103, eff. July 1, 1997, removed gender-specific references applicable to human beings without substantive changes in legal effect.

Laws 2003, c. 2003-179, § 4, in subsec. (8), substituted a reference to the Legal Affairs Revolving Trust Fund for a reference to the Consumer Frauds Trust Fund in the third sentence.

LIBRARY REFERENCES

2002 Main Volume

Consumer Protection ¶6.

Westlaw Topic No. 92H.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237-238.

RESEARCH REFERENCES

2004 Electronic Pocket Part Update
Encyclopedia

FL Jur. 2d Consumer & Borrower Protection, § 70 CONTRACT REQUIREMENTS.

FL Jur. 2d Consumer & Borrower Protection, § 71 CREDIT CARD TRANSACTIONS; AUTOMATED CALLING.

FL Jur. 2d Consumer & Borrower Protection, § 72 ENFORCEMENT; PENALTIES.

West's F. S. A. § 501.059, FL ST § 501.059

Current with 2004 legislation effective through May 28, 2004

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END OF DOCUMENT